

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-70632

MICHAEL E. PIONTEK,

Chapter 7

Debtor.

Judge Thomas J. Tucker

**OPINION AND ORDER DENYING FORD MOTOR CREDIT COMPANY, LLC'S
MOTION TO ENLARGE TIME FOR FILING
REAFFIRMATION AGREEMENT (DOCKET # 22),
AND DISAPPROVING REAFFIRMATION AGREEMENT (DOCKET # 21)**

This case is before the Court on Ford Motor Credit Company, LLC's motion entitled "Motion to Enlarge the Time for Filing a Reaffirmation Agreement between the Debtor and Ford Motor Credit Company, LLC," filed on February 12, 2010 (Docket # 22, the "Motion"). The Motion states that "[t]he Reaffirmation Agreement was not returned to Ford's Counsel until after Debtors' [sic] case was discharged on January 25, 2010." (Motion at ¶ 1.) The Motion seeks an order "enlarg[ing] the time to file a reaffirmation agreement beyond the 60 days as set forth in Fed.R.Bankr.P. 4008." (*Id.* at ¶ 2.) Ford's counsel also filed the Reaffirmation Agreement in question, on February 12, 2010 (Docket # 21).

Debtor filed his voluntary petition for relief under Chapter 7 in this case on October 2, 2009. The date first set for the § 341(a) meeting of creditors was November 25, 2009 (Docket # 6). On January 25, 2010, the Court entered an order granting Debtor a discharge under 11 U.S.C. § 727 (Docket # 19).¹

¹ It appears that the discharge order was entered one day too soon. The deadline for objections to discharge was Monday, January 25, 2010 (60 days after the date first set for the § 341(a) meeting of creditors, *see* Fed.R.Bankr.P. 4004(a), which was Sunday, January 24, 2010, delayed until Monday, January 25, 2010 under Fed.R.Bankr.P. 9006(a)(1)(C).) The discharge order should have been entered on Tuesday, January 26, 2010, instead of one day earlier. But the entry of the discharge order one day

The deadline to file a reaffirmation agreement is established by Fed.R.Bankr.P. 4008(a) — the deadline is “no later than 60 days after the date first set for the meeting of creditors under § 341(a) of the Code.” In this case, the deadline was January 25, 2010. Rule 4008(a) also provides that the Court may “at any time and in its discretion,” extend this deadline. But this rule and Fed.R.Bankr.P. 4004(c)(1)(J) contemplate that such a motion to extend can only be granted if the discharge has not yet been granted. *See* Fed.R.Bankr.P. 4008 advisory committee notes to 2008 Amendments (“Rule 4004(c)(1)(J) accommodates . . . an extension [of time for filing a reaffirmation agreement] by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.”).

Further, the Reaffirmation Agreement filed on February 12, 2010 (Docket # 21) is not enforceable. Under 11 U.S.C. § 524(c)(1), a reaffirmation agreement is not enforceable unless it “was made before the granting of the discharge under section 727.” *See also In re Herrera*, 380 B.R. 446, 449-55 (Bankr. W.D. Texas 2007) and cases cited therein. Ford did not sign the Reaffirmation Agreement until February 12, 2010, well after the discharge order was entered on January 25, 2010. This is indicated in Part B of the Reaffirmation Agreement, and also is acknowledged in the Motion.²

In this case, no reaffirmation agreement between Debtor and Ford was made before Debtor was granted a discharge. As a result, there can be no enforceable reaffirmation agreement between these parties. Therefore, no purpose would be served by granting Ford’s Motion, even if

early is not material to the Court’s rulings in this Opinion and Order.

² Debtor’s signature in Part B of the Reaffirmation Agreement is undated, and the Motion does not say when the Debtor signed the agreement. But it is clear that the Reaffirmation Agreement was not “made” for purposes of § 524(c)(1) until, at the earliest, February 12, 2010, when Ford signed it.

the Court otherwise had the authority to do so.

For these reasons,

IT IS ORDERED that the Motion (Docket # 22), is DENIED.

IT IS FURTHER ORDERED that the Reaffirmation Agreement (Docket # 21), is DISAPPROVED as unenforceable under 11 U.S.C. § 524(c)(1).

Signed on February 18, 2010

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

Not for publication